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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,614	02/19/2002	Ralph L. Bass	1136/9	5599

7590 05/09/2003
Jennifer L. Skord
133 Country Lane
Pittsboro, NC 27312

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/078,614

Applicant(s)

BASS, RALPH L.

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "gently" and "gentle" in claims 1 and 7, respectively, are relative terms which render the claim indefinite. The terms "gently" and "gentle" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claim 6, the term "other topical medicaments and cosmetics for the topical treatment of cellulite" renders the claim vague and indefinite, as the metes and bounds of the scope of the limitation is unclear.

The term "naturally present" renders claim 14 vague and indefinite, as it is not clear whether the ingredients must be naturally derived.

The terms "potassium protein complexes" and "sodium protein complexes" render claim 15 vague and indefinite. There is no disclosure in applicants' application to for a skilled artisan to determine the metes and bounds of the scope of the claims.

The remaining claims are rejected as depending on indefinite base claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrichs (DE 29616496) in view of Taylor et al. (US 5869104) ("Taylor") and New York Daily News (July 19, 2001).

Friedrichs teaches method of treating cellulite by topically applying a composition comprising about 55-65 % of sea salt, which is viewed as sodium chloride. See English translation, USPTO 2003-2637, p. 2, Claim of Protection. The reference teaches that the treatment has lymph-flow stimulating effect. See p. 1.

The reference fails to teach the recited solid block formulation of salt.

Taylor teaches solid block formulation of substantially pure salts of sodium chloride useful to topically treat human skin conditions. See col. 1, line 50 – col. 2, line 4. The description of the type of salt used in the invention and the solid block formulation is taught in col. 3, lines 5- 62. See instant claims 2-6. The method of applying the solid block on the skin is described in col. 4, lines 7 – 33 and lines 58 – 61. See instant claims 7-12.

New York Daily News teaches that it is well known in the art that mechanical ^amessage may be effective in reducing cellulite. See "Rubbing Off Cellulite".

Given the general teaching of using sea salt to treat cellulite by stimulating lymph-flow in Friedrichs, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to have expected that the method of gliding skin with solid salt block in the Tylor reference would similarly effective in reducing signs of cellulite. The resulting reduction of cellulite from the mechanical ^amassage would have been also obvious in view of New York Daily News.

2. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrichs, Tylor, and New York Daily News as applied to claims 1-12 above, and further in view of Koike et al. (US 6461623 B2) ("Koike").

The combined references fail to teach using potassium chloride in the salt block composition.

Koike teaches a massaging composition. The reference teaches to add 0.1-30 % by weight of sodium chloride and/or potassium chloride for scrubbing effect and skin contractin effect. See col. 4, lines 23 - 36.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the solid salt block in Taylor by adding potassium chloride as motivated by Koike because of the expectation of successfully producing a massaging solid composition with a similar effect.

3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrichs, Tylor, and New York Daily News as applied to claims 1-12 above, and further in view of Aldrich (1996).

The combined references fail to mention the additional components recited in claims 14 and 15.

Aldrich teaches that 99% pure sodium chloride and potassium chloride contain traces of phosphate ions. See p. 1328 and 1228, respectively.

Given the general teaching in Aldrich that sodium chloride with high purity contains phosphate ions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have expected that the solid salt block of Taylor contain sodium phosphate.

Conclusion


No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
May 2, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER

5/2/03